

JAYNE A. McHARGUE

IBLA 81-547

Decided January 25, 1982

Appeal from decision of the Idaho State Office, Bureau of Land Management, declaring placer mining claims abandoned and void. I MC 14828 and I MC 14829.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Evidence: Presumptions--Evidence: Sufficiency

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

3. Administrative Procedure: Adjudication--Evidence: Generally--Evidence: Presumptions--Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the

claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

APPEARANCES: Jayne A. McHargue, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Jayne A. McHargue appeals the March 27, 1981, decision of the Idaho State Office, Bureau of Land Management (BLM), which declared the Blackkey #1 and #2 mining claims (I MC 14828 and I MC 14829) abandoned and void for failure to comply with the recording requirements set by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the regulations found in 43 CFR 3833.2, by failing to file evidence of annual assessment work or a notice of intention to hold the claims on or prior to December 30, 1980.

Appellant argues that she did send to BLM a copy of the 1980 proof of assessment work that she filed with the county recorder's office but that she has no record or proof of mailing. Appellant submits copies of several documents on appeal: The proof of assessment work as filed in the Idaho recorder's office, an inquiry as to the status of these claims that appellant sent to BLM on March 7, 1981, and 1981 communications between appellant and the U.S. Forest Service, Department of Agriculture, concerning a plan of operations for these claims. Appellant argues in effect that she did not intend to abandon these claims.

[1] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), and the pertinent regulation, 43 CFR 3833.2-1(a), require that the owner of an unpatented mining claim located prior to October 21, 1976, shall file with BLM on or before October 22, 1979, and on or before December 30 of each subsequent calendar year, a notice of intent to hold the claim or proof of assessment work performed on the claim. Congress has declared that failure to file the required instrument is deemed conclusively to constitute abandonment of a claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976). See 43 CFR 3833.4(a). The record indicates that the claims were located in 1941 and that location notices and proof of assessment work were first submitted to BLM on July 10, 1979. The next evidence of assessment work was due to be filed with BLM on or before December 30, 1980. The record does not show that BLM received any documents during the year 1980. Therefore, these mining claims were properly declared abandoned and void.

[2] Although appellant asserts that she mailed the required documents to BLM, the record does not show that BLM received the documents. A presumption of regularity attends official acts of public officers in the proper discharge of their official duties. United States v. Chemical Foundation, 272 U.S. 1, 14-15 (1926); Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976); Kephart v. Richardson, 505 F.2d 1085, 1090 (3rd Cir. 1974); Bernard S. Storper, 60 IBLA 67 (1981); H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981). It is presumed that administrative officials have properly discharged their duties and have not lost or misplaced legally significant documents submitted for filing. John Walter Starks, 55 IBLA 266 (1981). This presumption may be rebutted by substantial countervailing evidence. Lawrence E. Dye, 57 IBLA 360 (1981); L. E. Garrison, 52 IBLA 131 (1981). After reviewing the assertions appellant submitted, we do not find that she has overcome this presumption of regularity.

[3] The record does indicate that appellant did not intend to relinquish these claims. Unfortunately, lack of intent to abandon a mining claim cannot mitigate the effect of failure to file the documents which FLPMA requires. Edgar W. Cook, 58 IBLA 358 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). As we noted in Lynn Keith, *supra*:

At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered.

Id. at 197, 88 I.D. at 372.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

